

FILED & ENTERED

DEC 02 2022

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SANTA ANA DIVISION**

In re:

Jamie Lynn Gallian,

Debtor(s).

Janine Jasso,

Plaintiff(s),

v.

Jamie Lynn Gallian,

Defendant(s).

Case No.: 8:21-bk-11710-SC

CHAPTER 7

Adv No: 8:21-ap-01096-SC

**ORDER CONTINUING HEARING ON  
MOTION TO DISMISS**

Continued Hearing:

Date: January 10, 2023

Time: 1:30 PM

Courtroom: 5C

The hearing on Debtor's Motion to Dismiss Complaint filed November 8, 2022 [Dk. 63] is hereby CONTINUED to January 10, 2023, at 1:30 p.m. Any response is due 14 days prior to the hearing. Replies are due 7 days prior to the hearing.

While the Motion to Dismiss seeks dismissal under FRCP 12(b)(6), the Court will treat the motion as one seeking relief under FRCP 12(c). As explained by the District Court *in Daimler Ag v. A Z Wheels LLC*, No. 16-CV-875-JLS (MDD), 2017 U.S. Dist.


LEXIS 231381, at \*4-5 (S.D. Cal. Nov. 27, 2017):

The present Rule 12(b)(6) Motion is untimely, as Defendants answered the Complaint prior to bringing the Motion. See Fed. R. Civ. P. 12(b) (providing that a Rule 12 motion "must be made before pleading if a responsive pleading is allowed"). However, the Court construes Defendants' Rule 12(b)(6) Motion as a motion for judgment on the pleadings under Rule 12(c). District courts in this circuit can treat improperly filed motions to dismiss as motions for judgment on the pleadings. See *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980); see *Dynetix Design Sols. Inc. v. Synopsys Inc.*, No. CV 11-05973 PSG, 2013 WL 2239445, at \*3 (N.D. Cal. May 21, 2013) (construing post-answer Rule 12(b)(6) motion as a Rule 12(c) motion). "Analysis under Rule 12(c) is substantially identical to analysis under Rule 12(b)(6) because, under both rules, a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy." *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (internal quotation marks and citation omitted). Thus, the Court analyzes Defendants' arguments under Rule 12(c).

*Daimler Ag v. A Z Wheels LLC*, No. 16-CV-875-JLS (MDD), 2017 U.S. Dist. LEXIS 231381, at \*4-5 (S.D. Cal. Nov. 27, 2017).

IT IS SO ORDERED.

Date: December 2, 2022

  
Scott C. Clarkson  
United States Bankruptcy Judge

**NOTICE OF ENTERED ORDER AND SERVICE LIST**

Notice is given by the court that a judgment or order entitled (*specify*) **ORDER CONTINUING HEARING ON MOTION TO DISMISS** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

**Janine Jasso**  
PO Box 370161  
El Paso, TX 79937